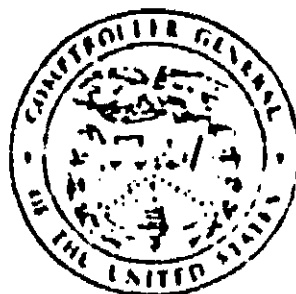


DECISION



THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D. C. 20548

40369

FILE: B-179518

DATE: JANUARY 23, 1974

MATTER OF: Inscom Electronics Corporation

DIGEST: Upon reconsideration, B-179518, B-179509, November 6, 1973, affirmed because Walsh-Healey Public Contracts Act and ASPR clearly place administration of Act in Executive Department and GAO does not review determinations whether particular bidder is qualified as regular dealer or manufacturer under Act.

Upon reconsideration, B-179518, B-179509, November 6, 1973, affirmed because purpose of Walsh-Healey Public Contracts Act is to use Government purchasing power as lever to raise labor standards and not intended to afford small businesses special considerations, which are embodied in Small Business Act, 15 U.S.C. 631 et seq.

Reconsideration of our decision B-179518, B-179509, November 6, 1973, has been requested. In that decision, our Office stated that we could not question the determination of the contracting officer and Department of Labor (DOL) that the Inscom Electronics Corporation (Inscom) did not qualify as a manufacturer of circuit boards as defined by the Walsh-Healey Public Contracts Act, 41 U.S.C. 35-45 (Act), and Armed Services Procurement Regulation 12-603.1. Under the Act, such DOL determinations are final and our Office is not authorized to review them. Consequently, our Office took no further action regarding the rejection of Inscom's bid under the two Naval procurements.

It is requested that our Office review the validity of the DOL determination in order to take exclusive control of the administration of the Act away from the Executive Department.

Under section 38 of the Act, Congress authorized and directed the Secretary, DOL, to administer the provisions of the Act. Pursuant to this grant of authority, the Secretary has promulgated regulations which delegate initial authority to the contracting officer to determine whether a bidder is qualified as a manufacturer or regular dealer, subject to DOL review. These regulations have the force and effect of law. United States v. Sawyer Fuels, Inc., 199 F. Supp. 876 (1961). It is clearly the intent of Congress to vest administration of the Act with the Executive Department and we have consistently so held.

The protest also asserts that the procedures established to implement the Act deprive small businesses of the recourse intended by Congress and are not in accord with the intent of the Act. The purpose of the Act is to prevent the use of public funds to depress working conditions and, instead, use the leverage of the Government's purchasing power to raise labor standards. Perkins v. Lukens Steel Co., 310 U.S. 113 (1940); Endicott Johnson Corporation v. Perkins, 63 S. Ct. 339, 317 U.S. 501 (1943). Congressional and Government aid and assistance to small business to maintain their viability in free competitive enterprise is embodied in the Small Business Act, 15 U.S.C. 631 et seq.

Finally, our Office is requested to answer why a protestor is subjected to extensive costs in preparing its protest when the basis for our November 6, 1973, decision was clear at the time the protest was initially filed. While the ultimate decision may be clear at the time of filing of a protest, the initial protest letter must be sufficiently clear and definite to enable our Office to determine immediately that development of the case is unwarranted. Normally, when a protest concerns an area in which it is clear that our Office will take no action, we will so inform the protestor and the matter is then closed. However, it was not clear from the initial filing exactly what the bases of Inscom's complaint were. In that case, our Office is required by our Interim Bid Protest Procedures and Standards to further develop the case. Had our Office been able to discern the basis for the protest as filed originally, we would have, in the normal course, informed Inscom of our position on the matter and taken no further action.

Consequently, our November 6, 1973, decision is affirmed.

Deputy


Comptroller General
of the United States